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ABSTRACT

The lowering of the age of majority has raised doubts concerning the legality of regulations that restrict students over 18 from declaring themselves financially independent of their parents. This paper briefly examines the argument concerning the assumption that parents are responsible for financing the education of their children. With these arguments in mind, the current regulations used by various aid programs regarding independent or emancipated students are reviewed along with court decisions that have legal implications for these regulations. After looking at current trends in the number of students declaring financial independence, some speculation is made concerning the future of student aid programs. (Author)

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THE INDEPENDENT STUDENT AND STUDENT AID PROGRAMS

Jonathan D. Fife

THE PROBLEM

During the academic year 1974-1975 $8.3 billion was available through student aid programs (Fife 1975, p. 19). A majority of these programs have been established to achieve the goal of equal educational opportunity (Fife 1975). To achieve this goal, these programs base their awards primarily on the financial need of the student. To arrive at an equitable estimate of a student's financial need, and to distribute student aid to those students who could least afford college on their own, student aid programs have used various systems of student need analysis. Although the estimate of student need may vary according to the need analysis system used, all analysis systems have two underlying principles: educational costs minus student financial resources equal student need ("CSS Need Analysis . . .", 1974, p.v.; Henry 1975, p. 195; National Task Force 1975), and, at least for the traditional student (i.e., those students between the ages of 18 and 24 who are attending a postsecondary institution on a full-time basis), it is the family's responsibility to finance their children's education. Therefore, only after family resources have been utilized should the student receive aid (Bowman 1975; "CSS Need Analysis . . ." 1974; Department of Health . . . 1975; National Task Force . . . 1975; "Student Need Analysis" . . . 1975).

These principles of need analysis have been unchallenged until recently. On July 7, 1971, the 26th Amendment to the United States Constitution was ratified. It provided that "The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any states on account of age" (Golenpaul 1976, p. 513). As a result of this amendment, 44 states have passed legislation reducing in one way or another the legal "age of majority" (Hanson 1975, p. 5). The age of majority is defined as "the age at which, by law, a person is entitled to the management of his own affairs and to the enjoyment of civic rights. The opposite of minority" (*Black's Law Dictionary 1957*). Legally this means that at the age of majority, a person acquires full legal status to enter into contracts and transact business without financially obligating any other person for his or her dealings. This is not true for a minor, whose parents are financially responsible for his or her actions.

This lowering of the age of majority has raised doubts concerning the legality of regulations that restrict students over 19 from declaring themselves financially independent of their parents. This paper briefly examines the arguments concerning the assumption that parents are responsible for financing the education of their children. With these arguments in mind, the current regulations used by various aid programs regarding independent or emancipated students will be reviewed along with court decisions that have legal implications for these regulations. Lastly, after looking at the current trends in the number of students declaring financial independence, some speculation is made concerning the future of student aid programs.

RATIONALE FOR PARENTAL SUPPORT

One of the most prevalent and general arguments given for the family being primarily responsible for financing their children's higher education is it has *always* been the traditional method of paying for a higher education. Until the development of need-based student aid programs, the usual way a student could afford to attend college was either to pay for it all himself or to receive assistance from his parents. The purpose behind need-based student aid programs was to assist students from families who did not have the financial resources to send their children to college. These aid programs were not intended as substitutes for available parental resources; therefore, it was expected that students would be required to first call upon family resources and *only after these resources had been exhausted* would they qualify for student aid (Curtis 1974).

A second argument offered is that the family is responsible for preparing their children to enter society as self-sufficient participants. Since higher education is one among many means to develop career and social skills, it is the family's responsibility to pay for this training (Tombough 1973).

An argument that is sometimes given is the unfairness of granting financial aid to independent students without considering their family's financial background when a majority of students are being supported by their parents. As stated by Grant E. Curtis, "in principle, I am *not* able to accept the dichotomy of aiding so-called 'independent' students, based solely on the legal technicality of tax dependency plus parental unwillingness to contribute according to ability, when dependent applicants are denied aid because we estimate their parents are able and willing to pay" (1974, p. 74). It was this type of reasoning that led Charles Seward to write that there simply is not such a thing as an independent

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student unless as "an orphan or ward of the state or country" (1972).

A fourth argument put forth is that parents are responsible for supporting their children when they are minors. This argument was used extensively prior to 1971, when the age of majority was lowered. Now that most college students no longer legally qualify as minors, the argument has less validity (Tombough 1973).

PROGRAM DEFINITIONS

Based on this reasoning and in order to establish some uniformity in granting awards, student aid programs have established certain guidelines to standardize who qualifies as an emancipated or independent student. Generally there are four conditions that are examined: (1) Does the family consider their child to be a dependent? (2) To what degree has does the family financially supported the child? (3) How much time has does the student spent at his parents' home? (4) What is the age of the student?

The federal regulation for the Basic Educational Opportunity Grant Program defines an independent student as one who:

1. has not and will not be claimed as an exemption for federal income tax purposes for any person except his or her spouse for the current calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested, and
2. has not received and will not receive financial assistance of more than $600 from his or her parents in the calendar year in which aid is received and the calendar year prior to the academic year for which aid is requested, and
3. has not lived and will not live for more than two consecutive weeks in the home of a parent during a calendar year in which aid is received and the calendar year prior to the academic year for which aid is requested (College Entrance Examination Board 1975, p. 1).

While many of the states have adopted the federal regulation, some states use other definitions. Some individual state regulations are as simple as that of the State of Maryland, which will accept as an independent student any person who files a Student Confidential Statement with the College Scholarship Service instead of a Parent Confidential Statement. Other state regulations are as complicated as those of the state of California, which defines an independent student as one who:

1. Must not have lived with either parent nor received financial assistance exceeding $600 from either parent during the period stipulated below. The minimum length of independence necessary for an applicant to be recognized as emancipated from parental support will be based on his academic level at the time of award activation. The applicant may not have been claimed by his parents as a dependent for tax purposes at any time during the period of claimed independence.

For those applicants who will be:	Required length of independence from the beginning of senior year in high school
Freshmen	1 year
Sophomores	2 years
Juniors	3 years
Seniors	4 years
Postgraduates (fellowship winners)	5 years

2. Have been a ward of the court (in which case appropriate documents must be submitted).
3. Be an orphan and not claimed as a tax dependent during the current tax year by any person other than self or spouse.
4. Have been a part of an extremely adverse (home) situation which is documented and supported by school or responsible community personnel (minister, social worker, etc.) which leads to estrangement from the student's family and under circumstances where the student has not received a contribution in cash or in kind from his family for the preceding 12 months (Master Plan . . . 1975, p. 23).

Legal Implications

Because of the large number of states lowering their age of majority, there has been a spate of writings on the legal implications of various student aid regulations governing the recognition of independent students. While no court case has yet tested them, there are a number of related cases that have implications for these regulations.

Independent student regulations could be challenged in the courts under two constitutional considerations: *equal protection* as found in the 14th Amendment and *due process* as found in the 5th and 14th Amendments. Under equal protection considerations, the statute or regulation is considered unconstitutional if "suspect criteria" such as race, has been used as a basis for discrimination, or if a "fundamental right," such as the right to vote, has been denied. If either condition can be verified by the plantiff, then the state must demonstrate a "compelling state interest" for creating such a regulation. If such conditions cannot be verified, then the accuser must show that the statute or regulation has "no rational basis" (Barkin 1974).

In several court cases, including a recent U.S. Supreme Court decision in *Antonio School District v. Rodriguez*, education has been held as *not* being a basic or fundamental right. Age has also been held by the courts as not being a suspect criteria (Young 1974). Even if age were a suspect criteria, or if the courts begin to rule that education is a fundamental right, it could be easily demonstrated that there was a compelling state interest for continuing these regulations because it allowed a maximum amount of funds to be used to promote equal educational opportunity. Therefore, it is unlikely that independent student regulations will be thrown out due to violation of equal protection (Barkin 1974).

Under due process, however, these regulations could receive a closer review. Within the due process concept there has developed a recent judicial concept of "irrebutable presumption," whereby a regulation that assumes a certain condition and does not allow reasonable review before a decision is made is considered irrebutable and therefore held unconstitutional. *Vlandis v. Kline* overturned Connecticut's rule that for tuition purposes a student *always* has a nonresident status if at the time of his application to the state university he was a nonresident. The courts held that this statute contained an irrebutable presumption, often contrary to fact, and hence in violation of due process (Hanson 1975). Two other court cases that have implications for independent student regulations that assume or do not allow a student to declare and/or prove independence before a certain age or time period out of high school are *Starns v. Malkerson* and *U.S.D.A. v. Murry*. In the former case the Supreme Court held a Minnesota regulation, which provided that no student could qualify as a resident for tuition purposes unless he had been a resident of that state for at least one year *prior* to becoming a student, to be reasonable and therefore constitutional. The difference is that in Minnesota only one year was required to gain residency status versus the permanent exclusion that was present in the *Vlandis* case. In *Murry* the Supreme Court held that a Food Stamp Act that required proof of need in the prior year as well as the year in which aid was to be received created an irrebuttable presumption that a household is not needy in the present because it was not needy in the past. Since the records show that this was often contrary to fact, the regulation contained an irrebutable presumption and was therefore unconstitutional (Barkin 1974).

A third test that the courts may apply to a regulation is Does the

regulation have a "rational basis?" In other words, is the regulation reasonably related to the statue and does that regulation fulfill that legislative mandate. In the case of independent student regulations, the question is, Does the regulation accurately define when a student is financially independent from his family?

Thomas G. Barkin, in his analysis of the *Legal Implications of the Office of Education Criteria for Self-Supporting Students* (1974) concludes that the USOE regulations will probably withstand most court tests but are vulnerable mainly under the irrebutable presumption concept. Barkin suggests that by establishing some appeal mechanism, thus allowing a student who does not meet all the formal criteria to demonstrate his financial independence from his parents, an attack in the courts may be blunted.

One other legal consideration is that the courts have ruled a parent does *not* have a responsibility to send their offspring to college. In the case of *Roe* v. *Doe*, the court ruled that a parent has the right to discontinue college support if the child does not comply with reasonable parental requests. Since the courts are very reluctant to interject their opinions in the interaction of a family, it is only when both the parent and the child wish the child to go to college and the parent is supporting that child that the courts require parental contribution (Barkin 1974, p. 9). These cases usually involve divorced parents and child support considerations.

STUDENTS DECLARING INDEPENDENCE

Is the concern over independent students purely academic? The enrollment data of independent students indicate otherwise. The following table summarizes some trends. From the ACE freshmen norms survey (Astin, King, Light and Richardson, 1973, 1974; Astin, King, Richardson, 1975), there appears to be a decreasing number of students who have identified themselves as financially independent of their parents. This data is somewhat substantiated by students who are applying for student aid and have used the American College Testing Program financial aid service (American College Testing Program, 1971, 1973, 1974, 1975).

This stability or decline is not supported by the percentage of independent students applying for aid in certain programs. In both the Illinois State Scholarship program (1976) and the Basic Educational Opportunity Grant Program (1974, 75) there has been a more than 100 percent increase in the number of independent students qualifying for aid. While the percentage of increase for recipients of New York (Dickinson 1976) tuition assistance is less than the other two programs, this program was established in 1973 and has recently undergone certain regulation changes that could alter this fact.

There are several reasons given for the reported increase of students declaring their financial independence. Many of the states, such as Illinois and New York, have modified their regulations concerning independent students and have adopted regulations similar to those of the Basic Educational Opportunity Grant Program. A second reason is that there are a greater number of older students now attending college on a full-time basis. These students have been independent of their families for many years and easily meet even the most restrictive independent student criteria. A third reason is that students are becoming more sophisticated in seeking out student aid programs and understanding how to present themselves to receive the largest amount of aid. The mass media has also been effective in communicating the availability of student aid programs and emphasizing the advantage of applying as an independent student. An example of this is a brief description of the Basic Educational Opportunity Grant Program that appeared in *Women's Day* magazine (Quinn 1976). In this description Quinn writes "if your son or daughter has been self-supporting, he or she may be eligible for college aid—regardless of *your* ability to pay" (p. 58) (emphasis in original).

The consequence of more students declaring financial independence when applying for aid is more than just a greater number of students being eligible for aid. Because need analysis does not consider potential family support for independent students and since most independent students have a very small amount of available resources, they qualify for higher awards. For example, in the New York Tuition Assistance Program, the average award in 1975-76 was $461.00. The average award to students claiming exclusion of parental income was 11 percent greater or $516.00. Therefore as the number of eligible independent students increases, the higher will be the individual awards and the more costly will be student aid programs if these programs are to meet all the students' financial needs.

CONCLUSIONS

One conclusion to be drawn from the literature concerning independent students is that even without a court challenge it appears there will be an increased number of students qualifying for independent status. This trend is clearly seen in the number of students meeting the independent student criteria of the BEOG program.

It is more likely however that the program regulations concerning independent students eventually will be tested in the courts. While it is risky to predict the direction the courts will take, previous cases do give some indication about where these regulations might be vulnerable. Those regulations that establish an unreasonable or irrebuttable presumption of student's dependence will probably not withstand a legal test. Even the regulations requiring the establishment of independence only one year prior to application for aid are subject to legal scrutiny. Only those programs that provide for an appeal mechanism appear to have some defense from legal attack.

As more and more court cases are heard concerning age discrimination, especially concerning retirement laws, there is a chance that age may be classified by the courts as suspect criteria. If this occurs, then the awarding of student aid must be based on the same criteria for all adult applicants regardless of their age; in other words, a married student of 40 must be asked to produce the same evidence of independence as a single student of 18.

The courts may also consider any regulations regarding student independence to be unreasonable because of the concept of age of majority. Since a parent is not financially responsible for his children when they reach the age of majority, and since education is not a fundamental right, it is distinctly possible that the courts will find regulations that require parents to be financially responsible for the education of their child who has reached the age of majority to be unreasonable. This may be especially true in light of the fact that if a parent refuses to support their child's education, the child has no legal recourse that would force the parents to support him or her.

The present and intermediate future of student aid programs is not bright. It appears that more and more students will meet the independent student criteria of student aid programs. While there has been a general increase in some of the public sponsored student aid programs, recommendations have been made to eliminate or reduce other massive student aid programs, such as the G.I. Bill and Social Security Student Aid Benefits. The overall trend appears to be a leveling off of the growth of student aid programs. If this occurs, then with more independent students

qualifying for aid, there will be less aid available per student, as a consequence of which the average award per student will decrease. As this happens, more students from financially disadvantaged families will find college beyond their means. This would then create a student body made up primarily of middle- and upper-income students.

The long-range future is probably brighter than the intermediate future. In all probability, student aid programs will develop new administrative methods for distributing student aid. If aid is to continue to be based on student need, new legislation will be needed to establish the legal obligation of parents to finance, to the degree they are able, their children's postsecondary education. Increased funding of student aid programs will be required to meet the need of all students. Other alternatives to need-based student aid programs, such as a system of student vouchers and full-cost tuition or more free and low-tuition institutions, will also have to be explored.

Students Declaring Themselves Financially Independent (Percentage)

Survey or Program	Academic Years			
	1972-73	1973-74	1974-75	1975-76
ACE Freshman Norms	*	19.1	18.2	17.4
ACT Financial Aid Applicants	15	*	19	17
Ill. State Scholarship Applicants	10.5	19.6	30	30.8
Ill. State Scholarship Recipients	13.1	24.6	34.8	34.9
N.Y. Tuition Assistance Recipients	*	13.9	18.7	22.4
Basic Educational Opportunity Grants: applicants	*	12.3	19.5	26.4
students who qualify	*	15.3	27.9	29.4

*Data not available

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